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**IN THE
COURT OF APPEALS OF INDIANA**

PAUL NUNN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 29A04-0609-CR-489
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel Pfleging, Judge
Cause No. 29D02-0411-FC-156

May 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Paul Nunn was convicted, following a bench trial, of operating a vehicle after a lifetime suspension, a Class C felony. On appeal, Nunn contends the trial court erred in admitting evidence obtained as a result of a traffic stop because the stop was unconstitutional. Nunn also contends his conviction as a Class C felony was not supported by sufficient evidence linking him with his prior convictions. Concluding that the police officer did have reasonable suspicion to perform the traffic stop and that there was sufficient evidence to convict Nunn, we affirm.

Facts and Procedural History

On October 19, 2004, Hamilton County Deputy Sheriff Brian Niec was traveling west on 96th Street in Indianapolis in a marked police car. As was his routine practice, Deputy Niec ran a license plate number check on the vehicle directly in front of his police car. Bureau of Motor Vehicles (“BMV”) records indicated that the registered owner of the vehicle, Paul Nunn, was an habitual traffic violator (“HTV”) whose driver’s license was suspended for life. Deputy Niec pulled up to the right side of the vehicle to determine if the person driving the vehicle matched the description of the registered owner as provided in the BMV records. Deputy Niec noted that the driver’s gender and hair color matched the description of Nunn, and also determined that the height and age could fit the description.

Deputy Niec initiated a traffic stop and asked the driver for his license and registration. The driver could not supply Deputy Niec with a driver’s license, but he did give his registration, his name, his date of birth, and his social security number. Deputy Niec

compared the information provided by the driver to the BMV records and determined that the driver was Nunn. Because Nunn was driving with a suspended license, Deputy Niec took Nunn into custody. At the Hamilton County Sheriff's Department ("HCSD"), an arrest slate containing a photo of Nunn and certain identifying information was prepared and Nunn was fingerprinted.

The State charged Nunn with operating a vehicle after a lifetime suspension. On November 23, 2005, Nunn filed a motion to suppress, alleging that traffic stop violated the Fourth Amendment to the United States Constitution and Article I, section 11 of the Indiana Constitution. Nunn asserted that Deputy Niec did not have reasonable suspicion that any criminal activity was taking place at the time of the traffic stop. The trial court denied the motion on January 11, 2006.

On February 14, 2006, a bench trial was conducted, and the trial court overruled Nunn's objection regarding the admission of evidence concerning the driver's identity. In court, Deputy Niec identified Nunn as the driver he had stopped, and as the person who had identified himself as Paul Nunn. Through Detective Thurl Cecil, assistant keeper of the records and evidence technician for HCSD, the State introduced several exhibits. First, the State introduced copies of the arrest slate and fingerprints made at the time Nunn was booked at the Hamilton County Jail following his arrest for this offense. Nunn objected because the arrest slate was inaccurate in that it indicated Nunn's gender as female. Detective Cecil testified that mistakes were sometimes made by the booking department, but there was "no doubt" the arrest slate was Nunn's. Transcript at 52. Officer Cecil identified Nunn as the

same person depicted in the photograph. Nunn also objected because the arrest slate and fingerprint record were made, kept, and retrieved separately, so there was nothing linking the two documents together, and more importantly, nothing linking the fingerprints to Nunn. The trial court admitted the exhibit over Nunn's objection.

The State also introduced a certified copy of Nunn's BMV record indicating Nunn was determined to be an HTV in 1986 and that his license was suspended for life in 1989 following two subsequent convictions for operating a vehicle while an HTV. The State introduced further evidence from both of those convictions. Detective Cecil testified that he compared the fingerprints taken when Nunn was arrested on the instant charge with the fingerprints included in the exhibits from the two previous convictions and determined that they all belonged to Nunn. These exhibits were admitted into evidence over Nunn's objections that those exhibits could not be linked to him.

The trial court found Nunn guilty and sentenced him to five years at the Department of Correction. Nunn now appeals.

Discussion and Decision

I. Admission of Evidence

A. Standard of Review

Although Nunn originally challenged the admission of the evidence through a pre-trial motion to suppress, he appeals following a completed bench trial and challenges the admission of such evidence at trial. Thus, although Nunn states the issue as whether the trial court erred in denying his motion to suppress, "the issue is more appropriately framed as

whether the trial court abused its discretion by admitting the evidence at trial.” Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). Our standard of review for rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by objection at trial. Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), trans. denied. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied. We also consider uncontraverted evidence in the defendant’s favor. Id.

B. Admission of Evidence from Traffic Stop

An investigatory stop of a citizen by a police officer does not violate that individual’s Fourth Amendment rights where the officer has a reasonable articulable suspicion of criminal activity. Bogetti v. State, 723 N.E.2d 876, 878 (Ind. Ct. App. 2000). Such reasonable suspicion is determined on a case-by-case basis, and the totality of the circumstances is considered. Id. Similarly, under Article I, Section 11 of the Indiana Constitution, a police stop and brief detention of a motorist is reasonable if the officer reasonably suspects that the motorist is engaged in, or is about to engage in, illegal activity. Mitchell v. State, 745 N.E.2d 775, 786 (Ind. 2001). Thus, the question to be decided is whether Deputy Niec had reasonable suspicion to stop Nunn’s vehicle. The ultimate determination of reasonable suspicion is reviewed *de novo*. Burkett v. State, 736 N.E.2d 304, 306 (Ind. Ct. App. 2000).

Nunn argues evidence obtained as a result of Deputy Niec’s check of his license plate number should have been suppressed. He reasons that the evidence resulted from a random

search carried out without any reasonable suspicion that Nunn might have violated the law. Also, Nunn argues that the indicators used to identify the driver are “so vague . . . that virtually half the population (adult males) could have been identified by them” Appellant’s Brief at 11.

In Wilkinson v. State, 743 N.E.2d 1267 (Ind. Ct. App. 2001), trans. denied, we considered a similar argument. In that case, a police officer conducted a random license plate check and discovered that the registered owner of the vehicle was an HTV. The officer had not observed any traffic violations prior to running the license plate check. The officer noted, as the driver left a convenience store, entered his truck, and drove away, that driver matched the registered owner’s description and initiated a traffic stop to arrest the driver. The defendant, like Nunn, argued that evidence obtained as a result of the police officer’s random checks of license plate numbers should have been suppressed because there was no reasonable and articulable suspicion that the defendant might have violated the law. We held first that a random license plate check is not a search. Id. at 1270. We also held that after conducting the random check and discovering that the registered owner of the vehicle was an HTV and after ascertaining that the driver fit the description of the registered owner, the officer had reasonable suspicion to conduct a stop. Id. at 1271; see State v. Ritter, 801 N.E.2d 689, 692-93 (Ind. Ct. App. 2004), trans. denied (holding that stop was permissible when officer knew registered owner of vehicle had a suspended license but because of darkness, could not see the driver to verify he was the owner; officer had reasonable suspicion to stop car in order to determine if the owner was driving).

Like the officer in Wilkinson, Officer Niec obtained information through the computer check indicating the registered owner of the vehicle had a suspended license. Nunn contends, however, that unlike the officer in Wilkinson, who had a “clear view” of a driver who “closely matched the height and weight and hair color” of the registered owner, 743 N.E.2d at 1271, Officer Niec was able to verify only that the driver matched the gender and hair color of the registered owner’s description, while approximating that the driver’s height and age appeared to be consistent. Nunn therefore contends that his case falls into that category of cases that Wilkinson and Ritter stated might justify a different result. In Wilkinson, we noted that “had the officer not obtained a physical description or other information indicating [the defendant] was the driver of the car, we would find the stop impermissible” Id. at 1271 n.2. In Ritter, we stated that had the officer “been able to see the driver of the vehicle, and been able to discern that the person driving the car did not match the description of [the defendant], our result might have been different.” 801 N.E.2d at 693. Nunn asserts that because Officer Niec only positively matched two identifiers (gender and hair color) and had no supplemental personal knowledge of Nunn’s status, his observation that Nunn matched the description of the registered owner was unreasonable. We disagree.

Deputy Niec had information from his computer that the registered owner of this vehicle was suspended as an HTV, and made a reasonable attempt to match the physical description by driving alongside the vehicle, determining that the two characteristics he could readily observe matched, while also determining that there were no inconsistencies with the other characteristics. If Officer Niec had made no attempt to match the driver to the physical

description of the registered owner, we might agree with Nunn. However, under the circumstances, in which Officer Niec was trying to confirm a description as both he and Nunn sat in their cars, Officer Niec's identification was reasonable. Under both the federal and state constitutional analysis, Officer Niec's investigatory stop was permissible, and the trial court did not err in admitting the identification evidence.

II. Sufficiency of Evidence

Nunn also challenges whether the State presented sufficient evidence to convict him of operating a vehicle while suspended for life. When reviewing the sufficiency of the evidence, we neither reweigh evidence nor judge witness credibility. James v. State, 755 N.E.2d 226, 229 (Ind. Ct. App. 2001), trans. denied. Instead, we examine only the evidence favorable to the judgment together with the reasonable inferences to be drawn therefrom. Id. The court will affirm the conviction unless no rational fact-finder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000), trans. denied.

Nunn urges that the evidence does not support his conviction because information contained on one of the exhibits incorrectly listed Nunn as a female. Also, Nunn contends no other fingerprint evidence was introduced to prove what Detective Cecil used to compare Nunn's fingerprints from this case with his other convictions.¹ However, sufficient

¹ Nunn has provided photocopies of the exhibits in his appendix. He cites to the appendix when he asserts that "exhibits 3 and 6 are certifications only of print cards but no prints were part of the exhibits." Appellant's Brief at 14. It is true that the exhibits as reproduced in the appendix do not contain fingerprints. However, the exhibits as provided in the exhibit volume by the trial court reporter do have fingerprints on the reverse side of the case information. It appears that Nunn failed to photocopy both sides of the exhibits.

fingerprint evidence was introduced on the reverse side of the exhibits regarding Nunn's previous convictions. See Exhibits 3 and 6. The evidence consisted of certified copies of Nunn's fingerprints taken when Nunn was processed following his previous arrest on March 5, 1989 and compared to fingerprints taken from the current arrest on October 19, 2004.

There was sufficient evidence to prove at least a reasonable inference that Nunn was the same person who had been adjudicated as an HTV and not allowed to operate a motor vehicle. Deputy Niec identified Nunn as the person who informed him of his date of birth and social security number, which were identical to Nunn's BMV record. Finally, the photograph taken of Nunn matched the previous photographs from Nunn's previous convictions, and Detective Cecil pointed out that the photograph matched Nunn in the courtroom. Sufficient evidence supports the conviction.

Conclusion

The trial court properly admitted evidence from the traffic stop because Deputy Niec had reasonable suspicion to conduct a stop after determining that the registered owner of the vehicle had his license suspended for life and the driver matched the physical description of the registered owner provided by the BMV record. Furthermore, the State provided sufficient evidence that Nunn was operating the vehicle while his driving privileges had been suspended for life. For the foregoing reasons, we affirm the conviction.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.